

under this subsection shall be determined on the record after opportunity for an agency hearing. Each violation under this subsection shall be a separate offense.

(b) Amount of penalty

The amount of a penalty assessed under subsection (a) of this section shall be determined under regulations promulgated pursuant to this chapter, taking into account, in addition to other factors—

- (1) the archaeological, historical, or commercial value of the item involved;
- (2) the damages suffered, both economic and noneconomic, by an aggrieved party,¹ and
- (3) the number of violations that have occurred.

(c) Actions to recover penalties

If any museum fails to pay an assessment of a civil penalty pursuant to a final order of the Secretary that has been issued under subsection (a) of this section and not appealed or after a final judgment has been rendered on appeal of such order, the Attorney General may institute a civil action in an appropriate district court of the United States to collect the penalty. In such action, the validity and amount of such penalty shall not be subject to review.

(d) Subpoenas

In hearings held pursuant to subsection (a) of this section, subpoenas may be issued for the attendance and testimony of witnesses and the production of relevant papers, books, and documents. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

(Pub. L. 101–601, § 9, Nov. 16, 1990, 104 Stat. 3057.)

§ 3008. Grants

(a) Indian tribes and Native Hawaiian organizations

The Secretary is authorized to make grants to Indian tribes and Native Hawaiian organizations for the purpose of assisting such tribes and organizations in the repatriation of Native American cultural items.

(b) Museums

The Secretary is authorized to make grants to museums for the purpose of assisting the museums in conducting the inventories and identification required under sections 3003 and 3004 of this title.

(Pub. L. 101–601, § 10, Nov. 16, 1990, 104 Stat. 3057.)

§ 3009. Savings provision

Nothing in this chapter shall be construed to—

- (1) limit the authority of any Federal agency or museum to—

- (A) return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations, or individuals, and
- (B) enter into any other agreement with the consent of the culturally affiliated tribe or organization as to the disposition of, or control over, items covered by this chapter;

- (2) delay actions on repatriation requests that are pending on November 16, 1990;

- (3) deny or otherwise affect access to any court;

- (4) limit any procedural or substantive right which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations; or

- (5) limit the application of any State or Federal law pertaining to theft or stolen property.

(Pub. L. 101–601, § 11, Nov. 16, 1990, 104 Stat. 3057.)

§ 3010. Special relationship between Federal Government and Indian tribes and Native Hawaiian organizations

This chapter reflects the unique relationship between the Federal Government and Indian tribes and Native Hawaiian organizations and should not be construed to establish a precedent with respect to any other individual, organization or foreign government.

(Pub. L. 101–601, § 12, Nov. 16, 1990, 104 Stat. 3058.)

§ 3011. Regulations

The Secretary shall promulgate regulations to carry out this chapter within 12 months of November 16, 1990.

(Pub. L. 101–601, § 13, Nov. 16, 1990, 104 Stat. 3058.)

§ 3012. Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary to carry out this chapter.

(Pub. L. 101–601, § 14, Nov. 16, 1990, 104 Stat. 3058.)

§ 3013. Enforcement

The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this chapter and shall have the authority to issue such orders as may be necessary to enforce the provisions of this chapter.

(Pub. L. 101–601, § 15, Nov. 16, 1990, 104 Stat. 3058.)

CHAPTER 32A—CULTURAL AND HERITAGE COOPERATION AUTHORITY

Sec.	
3051.	Purposes.
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3053.	Reburial of human remains and cultural items.
3054.	Temporary closure for traditional and cultural purposes.
3055.	Forest products for traditional and cultural purposes.
3056.	Prohibition on disclosure.
3057.	Severability and savings provisions.

§ 3051. Purposes

The purposes of this chapter are—

- (1) to authorize the reburial of human remains and cultural items on National Forest System land, including human remains and cultural items repatriated under the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.);

- (2) to prevent the unauthorized disclosure of information regarding reburial sites, including

¹ So in original. The comma probably should be a semicolon.

the quantity and identity of human remains and cultural items on sites and the location of sites;

(3) to authorize the Secretary of Agriculture to ensure access to National Forest System land, to the maximum extent practicable, by Indians and Indian tribes for traditional and cultural purposes;

(4) to authorize the Secretary to provide forest products, without consideration, to Indian tribes for traditional and cultural purposes;

(5) to authorize the Secretary to protect the confidentiality of certain information, including information that is culturally sensitive to Indian tribes;

(6) to increase the availability of Forest Service programs and resources to Indian tribes in support of the policy of the United States to promote tribal sovereignty and self-determination; and

(7) to strengthen support for the policy of the United States of protecting and preserving the traditional, cultural, and ceremonial rites and practices of Indian tribes, in accordance with Public Law 95-341 (commonly known as the American Indian Religious Freedom Act; 42 U.S.C. 1996).

(Pub. L. 110-234, title VIII, §8101, May 22, 2008, 122 Stat. 1286; Pub. L. 110-246, §4(a), title VIII, §8101, June 18, 2008, 122 Stat. 1664, 2048.)

REFERENCES IN TEXT

The Native American Graves Protection and Repatriation Act, referred to in par. (1), is Pub. L. 101-601, Nov. 16, 1990, 104 Stat. 3048, which is classified principally to chapter 32 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The American Indian Religious Freedom Act, referred to in par. (7), is Pub. L. 95-341, Aug. 11, 1978, 92 Stat. 469, which is classified to sections 1996 and 1996a of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1996 of Title 42 and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

EFFECTIVE DATE

Enactment of this chapter and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.

DEFINITION OF “SECRETARY”

“Secretary” as meaning the Secretary of Agriculture, see section 8701 of Title 7, Agriculture.

§ 3052. Definitions

In this chapter:

(1) Adjacent site

The term “adjacent site” means a site that borders a boundary line of National Forest System land.

(2) Cultural items

The term “cultural items” has the meaning given the term in section 3001 of this title, ex-

cept that the term does not include human remains.

(3) Human remains

The term “human remains” means the physical remains of the body of a person of Indian ancestry.

(4) Indian

The term “Indian” means an individual who is a member of an Indian tribe.

(5) Indian tribe

The term “Indian tribe” means any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community the name of which is included on a list published by the Secretary of the Interior pursuant to section 479a-1 of this title.

(6) Lineal descendant

The term “lineal descendant” means an individual that can trace, directly and without interruption, the ancestry of the individual through the traditional kinship system of an Indian tribe, or through the common law system of descent, to a known Indian, the human remains, funerary objects, or other sacred objects of whom are claimed by the individual.

(7) National Forest System

The term “National Forest System” has the meaning given the term in section 1609(a) of title 16.

(8) Reburial site

The term “reburial site” means a specific physical location at which cultural items or human remains are reburied.

(9) Traditional and cultural purpose

The term “traditional and cultural purpose”, with respect to a definable use, area, or practice, means that the use, area, or practice is identified by an Indian tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use, area, or practice to the Indian tribe.

(Pub. L. 110-234, title VIII, §8102, May 22, 2008, 122 Stat. 1287; Pub. L. 110-246, §4(a), title VIII, §8102, June 18, 2008, 122 Stat. 1664, 2048.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

§ 3053. Reburial of human remains and cultural items

(a) Reburial sites

In consultation with an affected Indian tribe or lineal descendant, the Secretary may authorize the use of National Forest System land by the Indian tribe or lineal descendant for the reburial of human remains or cultural items in the possession of the Indian tribe or lineal descendant that have been disinterred from National Forest System land or an adjacent site.

(b) Reburial

With the consent of the affected Indian tribe or lineal descendant, the Secretary may recover and rebury, at Federal expense or using other

available funds, human remains and cultural items described in subsection (a) at the National Forest System land identified under that subsection.

(c) Authorization of use

(1) In general

Subject to paragraph (2), the Secretary may authorize such uses of reburial sites on National Forest System land, or on the National Forest System land immediately surrounding a reburial site, as the Secretary determines to be necessary for management of the National Forest System.

(2) Avoidance of adverse impacts

In carrying out paragraph (1), the Secretary shall avoid adverse impacts to cultural items and human remains, to the maximum extent practicable.

(Pub. L. 110-234, title VIII, §8103, May 22, 2008, 122 Stat. 1287; Pub. L. 110-246, §4(a), title VIII, §8103, June 18, 2008, 122 Stat. 1664, 2049.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

DEFINITION OF “SECRETARY”

“Secretary” as meaning the Secretary of Agriculture, see section 8701 of Title 7, Agriculture.

§ 3054. Temporary closure for traditional and cultural purposes

(a) Recognition of historic use

To the maximum extent practicable, the Secretary shall ensure access to National Forest System land by Indians for traditional and cultural purposes, in accordance with subsection (b), in recognition of the historic use by Indians of National Forest System land.

(b) Closing land from public access

(1) Authority to close

Upon the approval by the Secretary of a request from an Indian tribe, the Secretary may temporarily close from public access specifically identified National Forest System land to protect the privacy of tribal activities for traditional and cultural purposes.

(2) Limitation

A closure of National Forest System land under paragraph (1) shall affect the smallest practicable area for the minimum period necessary for activities of the applicable Indian tribe.

(3) Consistency

Access by Indian tribes to National Forest System land under this subsection shall be consistent with the purposes of Public Law 95-341 (commonly known as the American Indian Religious Freedom Act; 42 U.S.C. 1996).

(Pub. L. 110-234, title VIII, §8104, May 22, 2008, 122 Stat. 1288; Pub. L. 110-246, §4(a), title VIII, §8104, June 18, 2008, 122 Stat. 1664, 2049.)

REFERENCES IN TEXT

The American Indian Religious Freedom Act, referred to in subsec. (b)(3), is Pub. L. 95-341, Aug. 11, 1978,

92 Stat. 469, which is classified to sections 1996 and 1996a of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1996 of Title 42 and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

DEFINITION OF “SECRETARY”

“Secretary” as meaning the Secretary of Agriculture, see section 8701 of Title 7, Agriculture.

§ 3055. Forest products for traditional and cultural purposes

(a) In general

Notwithstanding section 472a of title 16, the Secretary may provide free of charge to Indian tribes any trees, portions of trees, or forest products from National Forest System land for traditional and cultural purposes.

(b) Prohibition

Trees, portions of trees, or forest products provided under subsection (a) may not be used for commercial purposes.

(Pub. L. 110-234, title VIII, §8105, May 22, 2008, 122 Stat. 1288; Pub. L. 110-246, §4(a), title VIII, §8105, June 18, 2008, 122 Stat. 1664, 2050.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

DEFINITION OF “SECRETARY”

“Secretary” as meaning the Secretary of Agriculture, see section 8701 of Title 7, Agriculture.

§ 3056. Prohibition on disclosure

(a) Nondisclosure of information

(1) In general

The Secretary shall not disclose under section 552 of title 5 (commonly known as the “Freedom of Information Act”), information relating to—

(A) subject to subsection (b)(1),¹ human remains or cultural items reburied on National Forest System land under section 3053 of this title; or

(B) subject to subsection (b)(2), resources, cultural items, uses, or activities that—

(i) have a traditional and cultural purpose; and

(ii) are provided to the Secretary by an Indian or Indian tribe under an express expectation of confidentiality in the context of forest and rangeland research activities carried out under the authority of the Forest Service.

(2) Limitations on disclosure

Subject to subsection (b)(2), the Secretary shall not be required to disclose information under section 552 of title 5 (commonly known as the “Freedom of Information Act”), concerning the identity, use, or specific location in the National Forest System of—

¹ So in original. Probably should be “(b)(1).”

- (A) a site or resource used for traditional and cultural purposes by an Indian tribe; or
- (B) any cultural items not covered under section 3053 of this title.

(b) Limited release of information

(1) Reburial

The Secretary may disclose information described in subsection (a)(1)(A)² if, before the disclosure, the Secretary—

- (A) consults with an affected Indian tribe or lineal descendant;
- (B) determines that disclosure of the information—
 - (i) would advance the purposes of this chapter; and
 - (ii) is necessary to protect the human remains or cultural items from harm, theft, or destruction; and
- (C) attempts to mitigate any adverse impacts identified by an Indian tribe or lineal descendant that reasonably could be expected to result from disclosure of the information.

(2) Other information

The Secretary, in consultation with appropriate Indian tribes, may disclose information described under paragraph (1)(B) or (2) of subsection (a) if the Secretary determines that disclosure of the information to the public—

- (A) would advance the purposes of this chapter;
- (B) would not create an unreasonable risk of harm, theft, or destruction of the resource, site, or object, including individual organic or inorganic specimens; and
- (C) would be consistent with other applicable laws.

(Pub. L. 110-234, title VIII, §8106, May 22, 2008, 122 Stat. 1288; Pub. L. 110-246, §4(a), title VIII, §8106, June 18, 2008, 122 Stat. 1664, 2050.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

DEFINITION OF “SECRETARY”

“Secretary” as meaning the Secretary of Agriculture, see section 8701 of Title 7, Agriculture.

§ 3057. Severability and savings provisions

(a) Severability

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance is held invalid, the application of such provision or circumstance and the remainder of this chapter shall not be affected thereby.

(b) Savings

Nothing in this chapter—

- (1) diminishes or expands the trust responsibility of the United States to Indian tribes, or any legal obligation or remedy resulting from that responsibility;
- (2) alters, abridges, repeals, or affects any valid agreement between the Forest Service and an Indian tribe;

(3) alters, abridges, diminishes, repeals, or affects any reserved or other right of an Indian tribe; or

(4) alters, abridges, diminishes, repeals, or affects any other valid existing right relating to National Forest System land or other public land.

(Pub. L. 110-234, title VIII, §8107, May 22, 2008, 122 Stat. 1289; Pub. L. 110-246, §4(a), title VIII, §8107, June 18, 2008, 122 Stat. 1664, 2051.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

CHAPTER 33—NATIONAL INDIAN FOREST RESOURCES MANAGEMENT

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§ 3101. Findings

The Congress finds and declares that—

(1) the forest lands of Indians are among their most valuable resources and Indian forest lands—

(A) encompass more than 15,990,000 acres, including more than 5,700,000 acres of commercial forest land and 8,700,000 acres of woodland,

(B) are a perpetually renewable and manageable resource,

(C) provide economic benefits, including income, employment, and subsistence, and

(D) provide natural benefits, including ecological, cultural, and esthetic values;

(2) the United States has a trust responsibility toward Indian forest lands;

(3) existing Federal laws do not sufficiently assure the adequate and necessary trust management of Indian forest lands;

(4) the Federal investment in, and the management of, Indian forest land is significantly below the level of investment in, and management of, National Forest Service forest land, Bureau of Land Management forest land, or private forest land;

(5) tribal governments make substantial contributions to the overall management of Indian forest land; and

² So in original. Probably should be “(a)(1)(A)”.